

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop)	
Additional Methods to Implement the California)	Rulemaking 06-02-012
Renewables Portfolio Standard Program.)	(Filed February 16, 2006)
)	
Order Instituting Rulemaking to Continue)	
Implementation and Administration of California)	Rulemaking 06-05-027
Renewables Portfolio Standard Program.)	(Filed May 25, 2006)
)	

PRE-WORKSHOP COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY
(U 338-E) REGARDING SB 1036 IMPLEMENTATION

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In accordance with the April 24, 2008 Request for Pre-Workshop Comments Regarding SB 1036 Implementation (the “Request”), Southern California Edison Company (“SCE”) respectfully submits these pre-workshop comments.

I.

INTRODUCTION AND BACKGROUND

On October 14, 2007, the Governor approved Senate Bill (“SB”) 1036, which terminated the California Energy Commission’s (“CEC”) responsibility to award and administer supplemental energy payments to renewable generators in order to subsidize the above-market price referent (“MPR”) costs of renewables portfolio standard (“RPS”) contracts. Instead, SB 1036 requires the Commission to establish a cost limitation for each investor-owned utility (“IOU”) on the total costs of RPS contracts above the MPR (also known as “above-MPR funds” or “AMFs”).¹ This limitation is equal to the amount of public goods charge (“PGC”) funds

¹ See Cal. Pub. Util. Code § 399.15(d).

currently accrued in the New Renewable Resources Account, plus the portion of PGC funds that the IOUs would have collected for this account through January 1, 2012.² SB 1036 requires the Commission to count those IOU RPS contracts with above-MPR costs towards an IOU's cost limitation provided such contracts meet certain conditions.³ If an IOU exceeds its cost limitation, then its renewable procurement obligation is limited to the quantity of renewable resources that it can procure at or below the MPR.⁴

The Legislature clearly expressed its intent in enacting SB 1036:

It is the intent of the Legislature to reform elements of the renewables portfolio standard program relating to cost containment. In recognition of numerous problems associated with the current process for awarding supplemental energy payments, the Legislature intends to restructure the renewables portfolio standard program to streamline the approval of contracts executed by electrical corporations for the purchase of electricity generated by eligible renewable energy resources involving costs above the market prices determined in subdivision (c) of Section 399.15 of the Public Utilities Code, to ensure that any above-market costs sought by generators may be relied upon in obtaining project financing, and to minimize both unnecessary delays and duplicative agency reviews. In achieving these objectives, the Legislature intends to continue meaningful ratepayer protections through limits on the total costs of meeting the renewable energy goals established pursuant to [the RPS legislation].⁵

On March 12, 2008, the Energy Division issued Draft Resolution E-4160 (the "Draft Resolution") implementing SB 1036. The Draft Resolution implemented the ratemaking aspects of SB 1036, established a cost limitation for above-MPR costs for each IOU, outlined the methodology for an AMFs calculator for the calculation of AMF requests and the tracking of approved AMF requests, and set forth eligibility criteria and reasonableness standards for RPS contracts with above-MPR costs that may be applied towards the IOUs' cost limitations. On March 26, 2008, SCE, Pacific Gas and Electric Company, San Diego Gas & Electric Company, the Center for Energy Efficiency and Renewable Technologies, and the California Wind Energy Association filed a joint request with the Commission's Executive Director asking that the

² See *id.* § 399.15(d)(1).

³ See *id.* § 399.15(d)(2).

⁴ See *id.* § 399.15(d)(3).

⁵ SB 1036, § 1 (emphasis added).

Commission bifurcate the non-ratemaking issues in the Draft Resolution in order to allow time for a workshop and other formal Commission process needed to properly consider the issues. On March 28, 2008, the Executive Director granted the joint parties' request and stated that the Energy Division would hold a workshop on the bifurcated SB 1036 issues. The Resolution E-4160 approved on April 10, 2008 implemented only the ratemaking aspects of SB 1036.

The Request states that purpose of the May 29, 2008 Energy Division workshop regarding the implementation of SB 1036 "is to develop a transparent methodology for efficiently and effectively using limited AMFs in a manner that maximizes benefits for ratepayers, stakeholders, and the RPS program." SCE does not dispute that this is a worthy goal. However, in implementing SB 1036, the Commission's paramount goal should be to adopt methodologies and procedures that comply with the legal requirements and statutory intent of SB 1036 and the rest of the RPS legislation. The Commission must recognize that the intent of SB 1036 was to streamline the approval of above-MPR contracts and ensure that AMFs may be relied upon, while continuing the meaningful ratepayer cost protections of the RPS statute. In an apparent effort to preserve limited AMFs, the Draft Resolution proposed stringent and arbitrary AMF eligibility standards not supported by law, overly restrictive and complicated reasonableness standards, and policies that would give the Commission broad and undefined discretion to revise and revoke AMF awards. These proposals are directly contradictory to the intent of SB 1036 to create a simple AMF process that will ensure the certainty of AMF awards, and would likely lead to many of the same problems with the prior system that the Legislature was trying to remedy in enacting SB 1036. Moreover, the AMF system proposed in the Draft Resolution would not efficiently and effectively use limited AMFs in a manner that maximizes benefits for ratepayers, stakeholders, and the RPS program. Instead, it would likely result in less efficient use of AMFs for less cost-effective projects at higher costs to IOU ratepayers.

The overall goal of the RPS program is to achieve 20% renewables by 2010. At a time when the Commission should be removing barriers to reaching this goal and seeking to open up

the renewables market, the proposals in the Draft Resolution would also have a chilling effect on renewable developers and create new barriers to the IOUs' renewable procurement.

The Commission should strive to implement SB 1036 in a way that complies with the law and the intent of SB 1036, as well as creating simple and clear rules that will encourage renewable procurement and support the IOUs in meeting their 20% by 2010 RPS requirements. SCE discusses specific issues and questions in the Request below.

II.

CALCULATION OF IOU COST LIMITATIONS FOR AMFS

The Draft Resolution calculated the cost limitation for AMFs for each IOU by taking the amount of funds transferred to the IOU from the CEC based on the IOU's respective contribution of PGC funds to the New Renewables Resource Account, plus the portion of PGC funds that the IOU would have collected for the account through January 1, 2012. SCE does not disagree with this general formula. It is consistent with the statutory language in Public Utilities Code Section 399.15(d)(1).

However, the Draft Resolution incorrectly calculated the amount of funds the IOUs would have collected through 2012 as it was applied in the Draft Resolution's AMFs calculator. That error remains in the Energy Division staff's proposed AMFs calculator. Specifically, when the Draft Resolution added the previously accrued funds to those funds that the IOUs would have collected to establish a cost limitation for AMFs in 2008 dollars, the Draft Resolution incorrectly took the *nominal* value of the amount of funds that would have been collected through 2012. For example, in the Draft Resolution the total AMFs cost limitation for SCE was: \$191.2 million (previously accrued) plus \$31.9 million (amount to be collected in 2008) plus \$32.4 million (amount to be collected in 2009) plus \$33 million (amount to be collected in 2010) plus \$33.5 million (amount to be collected in 2011) = \$322 million (supposedly in year 2008 dollars). The Draft Resolution then further exacerbated this problem by discounting credits against the AMFs cost limitation (i.e., the future above-MPR payments to renewable generators) by a rate equal to the IOUs' weighted average cost of capital to the year 2008. In effect, the Draft Resolution

ignored the time value of money with respect to the future collection of funds, while applying it when deducting future payments made out of the fund. Such an inconsistency artificially inflates the AMFs cost limitations for the IOUs, increases costs to ratepayers, and should be corrected.

The Draft Resolution's rationale for applying this inconsistency was that:

The calculator does not apply any discounting to the estimated collection of funds through 2012 because the mechanism used to establish the limit is based on "virtual" funds that would have been collected - no interest or financing costs are being incurred.⁶

This reasoning fails to recognize that the AMFs cost limitations are not "virtual." They are real in the sense that they directly affect the amount of money required from the IOUs' customers to fund above-MPR contracts. By not discounting the funds the IOUs would have collected, while at the same time discounting payments to renewable generators that count against the AMFs cost limitations, the IOUs' customers "incur" the interest on these funds through additional future payments that must be made to renewable generators with above-MPR costs.

If the Commission intends to discount the future above-MPR payments to renewable generators that will count as credits against the IOUs' AMFs cost limitations by a rate equal to the IOUs' weighted average cost of capital to the year 2008, then the Commission must similarly discount the amount of PGC funds the IOUs would have collected through 2012 by the same rate. An example of such a calculation for SCE's AMFs cost limitation is included as Appendix A to these comments. Similar calculations can be done for the other IOUs.

SCE believes, however, that there is a simpler and easier way to calculate the IOUs' AMFs cost limitations and track credits against such cost limitations. The Commission can resolve these issues by establishing a simple cash flow analysis – much like the balancing of a checkbook – to keep track of the IOUs' total AMFs cost limitations and the debits and credits against the AMFs cost limitations. Under such a simplified model, the funds transferred by the CEC, interest on the funds, and the funds that the IOUs would have collected in the future would

⁶ Draft Resolution at 14.

represent the cash flows in. The payments to projects with above-MPR costs would represent the cash flows out. By simply placing the cash flows into the years in which they occur and assuming a reasonable rate of return on the AMFs balance, the Commission can avoid the problems of attempting to discount accurately all monies back to 2008. An example SCE's recommendation is included as Appendix B to these comments and below:

		Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10
Inflows											
Interest on AMF Balance		\$10	\$10	\$10	\$10	\$11	\$10	\$10	\$9	\$8	\$7
Commission Funds Transferred	\$200										
New Virtual Additions		\$10	\$10	\$10	\$10						
Total Inflows	\$200	\$20	\$20	\$20	\$20	\$11	\$10	\$10	\$9	\$8	\$7
Outflows											
AMF Virtual Pmts to Project 1		\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10	\$10
AMF Virtual Pmts to Project 2		\$6	\$7	\$8	\$9	\$10	\$11	\$12	\$13	\$14	\$15
Total Outflows	\$0	\$16	\$17	\$18	\$19	\$20	\$21	\$22	\$23	\$24	\$25
AMF Balance											
	\$200	\$204	\$207	\$210	\$211	\$202	\$191	\$178	\$164	\$148	\$131

Under the simple cash flow model, the Commission would not be required to deduct and add to the “checkbook” on a real-time basis. Once the Commission inputs all of the appropriate cash flows, it simply needs to look at the ending AMFs balance to see whether the IOU has exhausted its cost limitation.

III.

METHODOLOGY FOR AMFS CALCULATOR

A. Proposed Revisions To AMFs Calculator

As discussed above, the easiest and most accurate way for the Commission to keep track of the IOUs' cost limitations on AMFs and the debits and credits against such cost limitations in a simple cash flow analysis. There is no need to use a discount rate to get the net present value of AMFs requests. The AMFs requests for specific RPS contracts can be tracked as cash flows out in the years they occur, just as the PGC funds the IOUs would have collected through 2012 can be tracked as cash flows in for the years they would have occurred. The balance is the IOU's AMFs cost limitation balance. The tracking of AMFs awards against the IOUs' total AMFs cost

limitations in the “AMFs SUMMARY” sheet of the staff’s proposed AMFs calculator should be revised to make this change.

In addition, SCE has made a correction to the staff’s proposed AMFs calculator. The formula in cell F41 in the “AMFs CALCULATION” sheet needs to be changed to ‘IF(B15="", "", F39-RESULTS!D18,3))’ from ‘IF(B15="", "", F39-F9)’ in order to make the comparison of MPR and contract price based on the TOD-adjusted costs. A revised AMFs calculator including this change is attached as Appendix C to these comments.

B. Determination Of The Appropriate MPR For Calculating AMFs

The Request asks the parties to identify what is the appropriate MPR to calculate an AMFs request for a contract:

- With prolonged negotiations (e.g., a contract executed more than 18 months after the close of the solicitation);
- That has been previously approved, but is requesting a price amendment; and
- With an expected commercial online date that is unrealistic given transmission upgrade needs.

The Request also asks the parties to comment on whether contracts with prolonged negotiations or projects that have significantly changed since the original bid should be considered bilateral contracts not eligible for AMFs.

In most cases of a contract with prolonged negotiations such that the contract is not executed within 18 months after the close of the original solicitation into which the contract was bid, SCE believes that the contract should be bid into the IOU’s next RPS solicitation and evaluated against the projects in that solicitation in order to most accurately evaluate the project against the current market for renewables. Accordingly, if the project is bid into the next solicitation, any resulting contract should not be considered a bilateral contract ineligible for AMFs. It should be considered the result of the later solicitation. It is therefore appropriate to

use the MPR for the later solicitation for the purposes of calculating the AMFs for the contract, rather than the MPR for the original solicitation.

For some amendments to previously approved contracts that substantially change the contracts' pricing terms, it may be appropriate to evaluate the new pricing against the then-current MPR, rather than the original MPR used for the contract. However, in other cases it may not be appropriate to use the then-current MPR. The Commission should look at pricing amendments on a case-by-case basis as it is not feasible or productive to create a bright line rule as to when a later MPR should be used for a price amendment and when it should not.

As explained in more detail below, SCE objects to the Commission adjusting the on-line date of a project for purposes of determining the applicable MPR (thus potentially reducing or increasing the AMF allocation) except in certain very limited circumstances. Such an adjustment should only be made based on objective and certain evidence that indicates that a project's expected on-line date has been altered. This adjustment could result in moving the on-line date to an earlier or later time. Furthermore, an IOU should have some ability to challenge a change in an AMF allocation that it believes is unreasonable or based on a lack of evidence. In addition, notwithstanding any change in on-line date that may be made pursuant to the guidelines outlined above, the AMF allocation for a project should always be "trued-up" in accordance with the actual on-line date of the project.

Finally, a project that has significantly changed since the original bid should not be considered a bilateral contract that is ineligible for AMFs. Projects often change from their original bid to the time when the final contract is executed. There are many reasons for such changes and many are to the benefit of IOU ratepayers. For example, the capacity of a project may increase during negotiations, a project may move to a more viable location as its siting studies are completed, a project may agree to develop in stages instead of all at once in order to demonstrate its technology or provide some energy at an earlier on-line date, or a project may adjust its on-line date or pricing (either up or down) during negotiations in order to reflect changes in transmission development, interconnection status, or other more current information.

In the case of significant changes from a counterparty's original bid, the IOU evaluates whether such change would have changed its evaluation of the project against other projects in the solicitation. Changes from the original bid do not make the contract a bilateral contract. It is not in the interest of either ratepayers or the RPS program to discourage negotiations of the original bid that often result in benefits to ratepayers and more realistic contract terms that permit projects to achieve commercial operations.

IV.

THE AMF ELIGIBILITY CRITERIA ESTABLISHED BY THE COMMISSION MUST FOLLOW THE RPS LAW

At a time when the Commission should be opening up broader opportunities for renewable contracting and project development in order to give the State the best chance of reaching its goals of 20% renewable resources by 2010, the Commission should not place overly restrictive and arbitrary restrictions on AMF eligibility that are inconsistent with both the express language of the RPS law and the intent behind SB 1036.

SB 1036 establishes certain criteria a contract must satisfy in order to count against an IOU's AMFs cost limitation.⁷ These should be the only criteria for AMF eligibility. The Draft Resolution went beyond the AMF eligibility criteria of the RPS statute and proposed to impose four additional criteria for AMF eligibility:

- The contract price is an all-in fixed price for a bundled energy product from a RPS-eligible facility;
- The contract is with an RPS-eligible facility that is physically located in California;
- The project is not otherwise eligible for other Commission-approved funding programs (e.g., Application 07-07-015 pending Commission approval for Emerging Renewable Resource Program (ERRP)); and
- The AMFs request cannot include firming and shaping costs.⁸

⁷ See Cal. Pub. Util. Code §§ 399.15(d)(2)(A)-(E).

⁸ Draft Resolution at 19.

The Request asks whether these additional eligibility criteria “promote the efficient use of limited AMFs in a manner that maximizes benefits for ratepayers, shareholders, and the RPS program.” They do not. The additional AMF eligibility criteria proposed in the Draft Resolution are overly stringent and inconsistent with both the language and purpose of the RPS statute. The Legislature expressly stated that its intent in enacting SB 1036 was to streamline the approval of RPS contracts with above-MPR costs and to ensure that any above-market costs sought by generators may be relied upon in obtaining project financing.⁹ The proposed AMF eligibility criteria in the Draft Resolution are wholly inconsistent with these goals. They would complicate the approval process for contracts with above-MPR costs and introduce uncertainty that may undermine generators’ ability to obtain project financing. Indeed, if the proposed eligibility criteria were adopted, many RPS-eligible projects who are eligible for AMFs under SB 1036 will be rendered ineligible for AMFs, thus jeopardizing their ability to obtain IOU RPS contracts and project financing.

In addition, the proposed AMF eligibility criteria will not maximize benefits for ratepayers, stakeholders, or the RPS program. The goal of the RPS program is to achieve 20% renewables statewide by 2010, and it is the best interest of ratepayers that this goal is achieved in the most cost-effective manner possible. Given that 2010 is fast approaching it is critical that the IOUs have the ability to execute contracts with the most cost-effective RPS-eligible projects, wherever they are located and however the pricing or the RPS-eligible product is structured. The proposed AMF eligibility criteria in the Draft Resolution have the potential to significantly diminish the number and quality of new renewable proposals. These new restrictions could cause developers to forego bidding into California solicitations and focus on other states instead. With the current limitation on out-of-state deliveries and the inability to rely on renewable energy credits, proposals that otherwise might have been established to help California meet its

⁹ SB 1036, § 1.

renewable goals would represent lost opportunities. SCE encourages the Commission not to adopt policies that will thwart renewable energy growth in California.

Finally, contrary to the suggestion in the Request, the proposed eligibility criteria will not promote the efficient use of limited AMFs. Under the proposed eligibility criteria, cost-effective RPS projects would be denied approval for AMFs solely because such projects are located out-of-state, do not include resource adequacy benefits, or have index pricing, among other reasons. Because such cost-effective projects are ineligible for AMFs, the result may be contracts and requests for AMFs for projects that are far less cost-effective or have on-line dates much further in the future. Ultimately, the result will likely be that more AMFs (and more ratepayers funds) will be used for less cost-effective projects with no increase in overall renewable energy. The proposed eligibility criteria will result in less efficient use of limited AMFs and higher costs to ratepayers.

SCE discusses each of the proposed eligibility criteria in more detail below.

A. The Contract Price Is An All-In Fixed Price For A Bundled Energy Product From An RPS-Eligible Facility

This requirement is arbitrary and without basis in the RPS statute. First, with respect to the “all-in, fixed price” requirement, this new restriction is inconsistent with California law. It is not referenced in the RPS legislation. Nor does there appear to be a logical reason behind its application. Effectively, this requirement eliminates the use of index pricing. Index pricing, while not the primary approach, has been favored by some developers and has resulted in customer savings. The Commission should not preempt such deals from AMF eligibility based on unknown and unstated reasons. Prohibiting AMF eligibility for contracts with index pricing will likely lead to greater customer costs and less efficient use of AMFs because counterparties will only revise their pricing to offer higher priced fixed pricing.

Second, with respect to the “bundled energy” requirement, it is unclear whether there is any reason why the definition of bundled energy must include resource adequacy benefits. The RPS program in California is an energy-based program. Nothing in the program requires that a

renewable project provide resource adequacy benefits. Moreover, the Legislature established the AMFs cost limitation to fund above-MPR costs of renewable resources to meet the RPS. Requiring resource adequacy benefits to qualify for such funding is completely outside of the intent and purpose of the RPS program and legislation.

B. The Contract Is With An RPS-Eligible Facility That Is Physically Located In California

The requirement that the facility be physically located in California in order to qualify for AMF treatment is in direct conflict with the explicit language of the RPS statute. The Draft resolution cited to Public Resources Code Section 25740.5(c) as the basis for including this requirement:

The program objective shall be to increase, in the near term, the quantity of California’s electricity generated by in-state renewable electricity generation facilities, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.¹⁰

The Draft Resolution, however, failed to recognize that the statutory definition of “in-state renewable electricity generation facilities” explicitly provides circumstances whereby an RPS-facility not physically located in California is considered “in-state” for purposes of the RPS program:

“In-state renewable electricity generation facility” means a facility that meets all of the following criteria:

(1) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(2) The facility satisfies one of the following requirements:

(A) The facility is located in the state or near the border of the state with the first point of connection to the transmission network within this state and electricity produced by the facility is delivered to an in-state location.

¹⁰ Draft Resolution at 19 n.50 (emphasis added).

(B) The facility has its first point of interconnection to the transmission network outside the state and satisfies all of the following requirements¹¹

Essentially, the statute provides that being physically located in California is not an essential element in determining whether a project is an “in-state renewable electricity generation facility.” Given this clear and unambiguous language, it would be legal error to require physical location in California as an AMF eligibility criteria.

Furthermore, this proposed eligibility criteria would not promote the efficient use of limited AMFs in a manner that maximizes the benefits to ratepayers and the RPS program. As with the other additional criteria, it will likely result in less efficient use of limited AMFs and higher costs for ratepayers. There is no basis for excluding all RPS-eligible out-of-state facilities from AMF eligibility.

C. The Project Is Not Otherwise Eligible For Other Commission-Approved Funding Programs

As with the other proposed eligibility criteria in the Draft Resolution, there is no basis for this criteria in the RPS statute. Nor was there is an explanation in the Draft Resolution of the goals this eligibility criteria would purportedly serve. If a contract eligible for a Commission-approved funding program is the most cost-effective RPS contract for an IOU, the efficient use of limited AMFs and ratepayer funds is not served by arbitrarily excluding the project from AMF eligibility.

Moreover, the only example of a Commission-approved funding program given in the Draft Resolution and the Request is Pacific Gas and Electric Company’s and San Diego Gas & Electric Company’s Application 07-07-015 for approval of their Emerging Renewable Resources Programs, which is pending Commission approval. At minimum, if the Commission intends to impose a project not being otherwise eligible for other Commission-approved funding programs as an AMF eligibility criteria, it must clearly state which programs it is referring to so that the

¹¹ Cal. Pub. Res. Code § 25741(b) (emphasis added).

eligibility criteria is clear to all parties. In addition, it makes little sense to exclude a project from AMF eligibility merely because it is eligible for other Commission funding programs even if it does not receive such funding.

D. The AMFs Request Cannot Include Firming And Shaping Costs

The Draft Resolution's stated reason for not including firming and shaping costs as AMF eligible was that they are not included in the MPR calculation.¹² This reasoning is flawed. The MPR calculation is based on a proxy combined cycle gas turbine ("CCGT"), which produces an energy product that is inherently firmed and shaped. Therefore, the cost of firming and shaping is inherently included in the cost of a CCGT and in the MPR methodology, and should be eligible for AMF allocation.

V.

THE COMMISSION MUST CLARIFY UNDER WHAT CIRCUMSTANCES IT WILL APPROVE ABOVE-MPR CONTRACTS

As discussed further below, the Draft Resolution set forth reasonableness criteria for the approval of an "AMF request."¹³ As SCE pointed out in its comments on the Draft Resolution, the language in the Draft Resolution did not definitively indicate exactly how the Commission would apply these criteria. Specifically, it was not entirely clear whether:

- (1) Approval of an AMF-eligible, above-MPR contract, including rate recovery and AMF allocation, would be subject to the reasonableness criteria; or
- (2) An AMF-eligible contract could be approved for rate recovery, but, due to failure to meet AMF reasonableness standards, not be approved for AMF allocation.

SCE assumed that the Commission intended the former interpretation. This interpretation appears logical given that the second interpretation would completely nullify the intent of SB 1036 in that it would allow the Commission to avoid the cost limitation safeguard embedded in

¹² Draft Resolution at 19 n.51.

¹³ *Id.* at 19-22.

the bill. But other language in the Draft Resolution was open to the second and more problematic interpretation.

If the Commission intends to adopt reasonableness criteria in a future decision on AMFs, and as discussed below it should not, the Commission must state in clear and unequivocal language that the approval of an AMF-eligible, above-MPR contract, including rate recovery and AMF allocation, is subject to the reasonableness criteria set forth in that decision.

VI.

AT A TIME WHEN THE COMMISSION SHOULD BE PROMOTING RPS RESOURCES, THE AMF REASONABLENESS REQUIREMENTS SET FORTH IN THE DRAFT DECISION WOULD PROVIDE SIGNIFICANT BARRIERS TO RPS DEVELOPMENT

The Draft Resolution established rather onerous reasonableness standards for the approval of above-MPR contracts. SCE has serious concerns over the impact these standards would have on the market for renewable resources. Namely, the standards established in the Draft Resolution are so stringent that it may be impossible for the IOUs to submit an above-MPR contract and receive Commission approval if such standards were adopted.¹⁴ Such restrictions would likely result in fewer RPS bids into the IOUs' solicitations for fear of not being able to satisfy the Commission's standards.

In addition to providing potentially unachievable standards, these potential new constraints to RPS development come at a very inopportune time. The lack of transmission and the difficulties in licensing, permitting, and constructing new transmission are a significant impediment on a developer's ability to interconnect new renewable resources. Adding additional barriers in simply obtaining approval of an RPS agreement will further constrict an already tight renewables market. Given that California has some of the most aggressive renewable energy goals in the nation, the Commission should be working towards stimulating the renewable

¹⁴ SCE discussed some of the problems with the specific reasonableness standards proposed in the Draft Resolution in its comments on the Draft Resolution. See SCE Comments on Draft Resolution at 8-10.

market in order to help reach these goals. Unfortunately, the reasonableness standards provided in the Draft Resolution would constrain new renewable development and contribute to the barriers that already exist.

Applying the reasonableness standards in the Draft Resolution would also undermine the goals of SB 1036. As discussed above, the Legislature's intent in enacting SB 1036 was to streamline the approval of above-MPR contracts. The overly restrictive reasonableness standards in the Draft Resolution would make the approval of above-MPR contracts significantly more complicated, rather than less so.

SCE is concerned that the Commission is considering reasonableness standards that may make the approval of above-MPR contracts impossible, and that would require a significant expenditure of time and effort that could be more productively used towards the actual procurement of renewable resources. There is no evidence that the Commission's existing standards for review of RPS contracts are inadequate. Nor is there any evidence that implementing the reasonableness standard in the Draft Resolution would promote any of the goals of the RPS program. In evaluating RPS contracts, the Commission should focus on whether the IOUs followed a reasonable process (e.g., whether the IOUs conducted their solicitations fairly and in compliance with Commission directives). Stringent and overly burdensome reasonableness standards discourage potential RPS projects from bidding in IOU solicitations with no benefit to the overall goals of the RPS program.

Furthermore, as a general principle, any reasonableness standard established by the Commission should be applicable to all contracts, including those below the MPR. The Request asks whether the Commission should review various types of renewable contracts under the same or varying standards. All of these contracts should be reviewed under the same standard. The IOUs' customers bear the cost of all RPS contracts regardless of whether the contract price happens to be above or below the MPR. Given this reality, it makes little sense to draw an arbitrary line as to the level of scrutiny the Commission should apply in determining whether to

approve a contract. It is difficult to imagine why a contract that is \$1/MWh above the MPR requires more intense scrutiny than a contract that is \$1/MWh under the MPR.

VII.

THE COMMISSION SHOULD HAVE VERY LIMITED DISCRETION TO REVISE OR REVOKE AN AMF AWARD

The Draft Resolution set forth several scenarios under which the Commission would be able to reduce or revoke an AMF award.¹⁵ It appeared that this discretion was applicable at any time from when an IOU submits a contract for Commission approval to when a project reaches commercial operation. However, it was not clear as to how the Commission would implement this discretion or under what circumstances.

The Commission's discretion to revise or revoke AMF awards should be very limited. The broad discretion proposed in the Draft Resolution would seriously undermine the intent and effectiveness of SB 1036. For example, the Commission's ability to reduce or revoke AMFs based on a project's failure to meet a contractual milestone leaves open the possibility that the Commission would be able to nullify the intent of SB 1036. SB 1036 is a customer safeguard. It limits the cost of renewables; thus, ensuring that the cost to reach the State's RPS goals are within reason. But if the Commission had the ability to unilaterally revoke or reduce an AMF allocation simply based on a project's failure to reach a contractual milestone, then the Commission would be able to avoid implicating the cost limitation and customer safeguard embedded in SB 1036. Under such a scenario, the IOUs' customers would still be forced to bear these costs without limit and a renewables at any cost regime would be established; thereby, nullifying the intent of the statute.

While avoiding the establishment of a "blank check" for renewables is an important issue, SCE is cognizant of the Commission's concern that AMFs not be encumbered for projects that are distressed and have little possibility of meeting contracted on-line dates (thus implicating

¹⁵ Draft Resolution at 20, 23-24.

a different MPR). In order to balance these competing interests, the Commission should establish a clear and limited set of circumstances under which it can alter an AMF allocation.

SCE suggests the following:

- Revocation of AMF allocation can only occur if the project’s contract is terminated. The Commission cannot revoke an AMF allocation based on a missed contractual milestone.
- The Commission can only adjust the on-line date of a project for purposes of determining the applicable MPR (thus potentially reducing or increasing the AMF allocation). Such adjustment must be based on objective and certain evidence that indicates that a project’s expected on-line date has been altered. It is important to note that this adjustment can result in moving the on-line date to both an earlier or later time. The Commission cannot reduce an AMF allocation by an arbitrary amount based on a missed contractual milestone.
- The IOUs should have some ability to challenge a change in an AMF allocation that they believe are unreasonable or based on a lack of evidence.
- Notwithstanding any of the changes that may be made pursuant to the guidelines outlined above, the AMF allocation for a project should always be “trued-up” in accordance with the actual on-line date of the project.

SCE believes these specific guidelines would address the Commission’s desire to have a project’s AMF award properly reflect the impacts of changes in the project’s status, while maintaining the customer safeguards found in SB 1036.

The Request asks how a “true-up” of awarded AMFs will or will not affect project financing. SCE does not believe that the type of “true-up” it suggests above (i.e., to make the AMF allocation consistent with the actual on-line date of the project) will impact project financing. However, the broad discretion to revise or revoke AMF awards proposed in the Draft Resolution could impact project financing. In general, the more certainty there is associated with AMF awards, the more likely it is that a project’s RPS contract and project financing will not be

impacted. The more uncertainty there is associated with AMF awards, the more likely it is that there could be detrimental impacts. The Legislature's intent in enacting SB 1036 was to remove the uncertainty associated with supplemental energy payments by created a streamlined and certain AMF approval process. The Commission should not undermine the Legislature's intent by giving the Commission broad and undefined discretion to revoke and revise AMF awards.

VIII.

GUIDING PRINCIPLES FOR AMF DETERMINATIONS

The Request discusses several potential "scenarios" where decisions regarding AMFs would need to be made. SCE does not address each scenario in detail. However, SCE offers the following guiding principles that should be applied in any scenario:

- AMF determinations should comply with the RPS law.
- AMF determinations should be guided by the intent of SB 1036 and the rest of the RPS legislation.
- Standards for AMF decisions should not thwart the overall RPS goal of 20% renewables by 2010.
- AMF standards should not prevent the selection of the most cost-effective RPS-eligible resources available.
- Methodologies and standards for AMF decisions should be simple and clear.
- The Commission should take a first-in, first-out approach when evaluating competing AMF requests.
- AMF decisions should be as certain as possible.
- AMF awards should follow reality, including true-ups when projects come on-line.

IX.

RULES FOR ADMINISTRATION OF AMFS

According to Public Utilities Code Section 399.15(d)(3), if an IOU exhausts its AMFs cost limitation, the IOU's RPS procurement obligation is limited to the quantity of renewable resources that are available at or below the MPR. As stated above, under properly outlined

circumstances, a change in the on-line date or the termination of a contract may result in a reduction (or potentially an increase) in the amount of encumbered AMFs for an IOU. If an IOU had previously exhausted its AMFs cost limitation, such a change could result in reinstating the IOU's duty to procure renewable resources above the MPR. The Commission must provide certainty as to when it will make such decisions in order to provide certainty to the IOUs in their procurement strategies and decisions. Knowing whether it is required to procure renewable resources above the MPR would greatly impact the manner in which an IOU conducts its solicitation. It makes little sense to insert a level of uncertainty into the IOUs' solicitations by allowing multiple decisions throughout the year as to the reduction or termination of an AMF award. Thus, SCE suggests that the Commission establish a set date upon which the Commission makes AMF allocation determinations. The Commission's annual report to the Legislature on the RPS program may be an appropriate vehicle for making and reporting on AMF allocation determinations.

X.

NEED FOR EVIDENTIARY HEARINGS

SCE does not request evidentiary hearings on any specific issues at this time. However, there is not a sufficient record to support, among other things, the IOU AMFs cost limitations, the additional AMF eligibility standards, the Commission's discretion to revoke or revise AMF awards, or the reasonableness standards for above-MPR contracts proposed in the Draft Resolution. If the Commission is considering adopting any of these proposals, evidentiary hearings may be required. SCE suggests that the Commission reevaluate whether evidentiary hearings are required after the May 29, 2008 workshop when the issues are further developed.

XI.

CONCLUSION

SCE looks forward to working with Energy Division staff and other stakeholders regarding the implementation of SB 1036. The implementation of SB 1036 will have a significant impact on the RPS program. The issues identified above will greatly impact both the

market for renewable development and the IOUs' ability to reach the State's RPS goals. Accordingly, SCE urges the Commission to carefully consider the issues associated with SB 1036 implementation at the May 29, 2008 workshop, in post-workshop comments, and in evidentiary hearings or other further proceedings if necessary.

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Dated: May 9, 2008

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of the **PRE-WORKSHOP COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) REGARDING SB 1036 IMPLEMENTATION** on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this 9th day of May, 2008, at Rosemead, California.

/s/ Sara Carrillo

By: [Sara Carrillo](#)

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